



David 13. Cohen  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

Telephone

(617)-796-1120

Telefax

(617) 796-1142

E-mail

mkruse@ci.newton.ma.us

Public Hearing Date:	June 12, 2007
Land Use Action Date:	<b>T.B.D.</b>
Board of Aldermen Action Date:	August 13, 2007
90-Day Expiration Date:	September 10, 2007

DATE: June 8, 2007

TO: Board of Aldermen

FROM: Michael Kruse      rector of Planning and Development  
Nancy Radze      , Chief Planner  
Alexandra An nth, Planner

SUBJECT: Petition #167-07 of 36-38 COURT STREET CONDOMINIUMS for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NON-CONFORMING STRUCTURE for existing decks including waivers from lot coverage; setback requirements; various dimensional requirements related to parking and perimeter screening **at** 36-38 COURT STREET CONDOMINIUM, Ward 2, NEWTONVILLE, on land known as Sec 23, Blk 19, Lot containing approximately 6,743 sf of land in a district zoned MULTI RESIDENCE 1.

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## EXECUTIVE SUMMARY

The petitioners (current owners of the four condominium units) are seeking to legalize the extension of the nonconforming use and structure that was made more nonconforming by the construction of larger rear decks and stairs, by the developer, at the rear the building. In addition, the parking facility does not meet multiple provisions of the applicable off-street parking requirements. The petitioners are seeking approval of related waivers.

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### I. BACKGROUND

The subject property appears to have been occupied as a 4-family dwelling since at least 1929. The subject property was recently renovated by a developer and subsequently marketed as four condominium units. As the 4-family dwelling use and structure pre-exist the City's zoning regulations, both the use and structure were considered to be nonconforming prior to the most recent alterations.

A building permit was issued for the replacement of the existing decks, however, when the owners requested certificates of occupancy, the Inspectional Services Department discovered that the structure was made more nonconforming by the construction of larger rear decks and stairs. On August 2, 2005, Inspectional Services Department issued temporary certificates of occupancy for three units and a certificate of occupancy for one unit, conditioned on the requirement that the owners obtain zoning relief or rebuild the rear decks to the smaller original size.

## II. ELEMENTS OF THE PETITION

The 6,749.3 sq. ft. subject property is located in a Multi-Residence 1 District on the south side of Court Street and is currently improved with a four-unit residential structure with 8 surface parking stalls behind the building.

The current condominium owners seek to legalize the extension of a non-conforming use and structure to allow the construction of the rear decks to remain as-built. In addition, because the parking for the structure provides parking for more than 5 cars, the parking facility does not meet multiple provisions of the off-street parking requirements. The petitioners are seeking waivers from the applicable parking requirements.

## III. ZONING RELIEF BEING SOUGHT

*Based on the Chief Zoning Code Official's written determination, dated May 4, 2007 (SEE ATTACHMENT "A"), the petitioners are seeking relief from or approvals through the following sections of the Zoning Ordinance:*

- > *Section 30-15, Table 1 and 30-21(b) allows the Board of Aldermen to grant a special permit to reduce the east side yard setback to allow decks within 7.3 ft. of the side lot line, to reduce the west side yard setback to allow decks within 4.2 ft. of the side lot line, and to increase the non-conforming lot coverage to 35.6%;*
- > *Section 30-21(a)(2)(b) and Section 30-21(b) allows the Board of Aldermen to grant a special permit for the extension of the nonconforming structure for the enlargement of the rear decks and to provide for an increase of the non-conforming 4 dwelling use in the MR 1 zone to a greater extent than the previously existing non-conforming 4 unit use;*
- > *Section 30-19(m) allows the Board of Aldermen to grant exceptions to the parking requirements including:*
  - ◆ *30-19(h)(1) for approval to waive parking side setbacks to allow stalls #1-5, and #7 to be located within approximately 0 ft. to 1 ft. of the side lot line;*
  - ◆ *30-19(h)(2)a) & b) for approval to waive the 9 ft. by 19 ft. stall size reducing stalls #1-6 to 7.8 ft. x 18 ft. and reducing stalls # 7 & 8 to 9 ft. x 18 ft.;*
  - ◆ *30-19 (h)(2)c) for approval to waive the requirement for one handicapped stall;*
  - ◆ *30-19 (h)(2)e) for approval to waive the requirement for end-stall turnout at stalls #6 & 8;*
  - ◆ *30-19 (h)(3)a) & b) for approval to waive maneuvering aisle width from 24 ft. to approximately 12-13 ft.;*

- ◆ *30-19 (h)(4)b) for approval to waive driveway entry/exit width from 12 ft. (one-way use) and from 20 ft. (two-way use) to approx. 11 ft for two-way use;*
  - ◆ *30-19 (i)(1)a) for approval to waive the requirement for perimeter parking lot screening;*
  - ◆ *30-19 (j)(1)a) & b) for approval to waive the requirement for parking facility lighting;*
  - ◆ *30-19 (j)(1)a) for approval to waive and reduce the requirement for parking facility lighting intensity from 1 ft. candle to the extent necessary;*
  - ◆ *30-19 (j)(2)e) for approval to waive the requirement for curb stops at stalls #7 and 8.*
- > *Section 30-23 for approval of the site plan; and*
  - > *Section 30-24(d) for approval of special permit.*

#### **IV. SIGNIFICANT ISSUES FOR CONSIDERATION**

*In reviewing this petition, the Board should consider the following:*

- > *Whether the expansion of the non-conforming use and structure, through the enlargement of the rear decks and stairs will be substantially more detrimental than the existing non-conforming use and structure;*
- > *Whether the rear decks, as constructed, are in keeping with the character of the surrounding neighborhood;*
- > *Whether the requested exceptions to the off-street parking requirements for the parking stalls will adversely impact safe and convenient pedestrian and/or vehicular movements on site; and*
- > *Whether the reduced driveway width will adversely impacts safe and convenient access to/from the site.*

#### **V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

##### **A. Site**

The subject property consists of a 6,749 sq. ft. lot located along the south side of Court Street in Newtonville. The site is relatively level, and is improved with a 4-unit residential structure, which has existed on the site since at least 1929. A paved 11-ft. driveway with a 10 ft. easement for 36-38 Court Street is located on the abutting lot to the west (42 Court Street) and leads back to an 8-stall surface parking area behind the residential structure. *The Planning Department notes that the petitioners should demonstrate to the Law Department that they have legal access by means of an easement, prior to this item being scheduled for a Working Session.*



Existing 4-unit structure at 36-38 Court St.



Rear view of structure including expanded decks and stairs

B. Neighborhood and Zoning

The subject property is located in Newtonville, one block north of Washington Street. The parcel is part of a sizable residential area that is primarily within a Multi-Residence

1 District, though there is a condominium development across Court Street that is zoned Multi-Residence 2. The other side of the block (facing Washington Street) is zoned Business 2.

The residential portion of the block consists of a mix of single- and multi-family (generally two-family) uses. The commercial side of the block consists of a mix of Commercial and Mixed Uses. Marty's liquors and Whole Foods Market are located on the next block, with frontage on Washington Street, to the east in a commercial district.

## VI. TECHNICAL ANALYSIS

### A. Dimensional Controls (Section 30-15)

The following table compares the existing and expanded 4-unit structure to the technical requirements in Section 30-15 as follows:

Single and Two-Family Dwellings on lots created before 12/7/53	Required.	Existing prior to deck expansion)	"Proposed" (after deck expansion)
Minimum lot size	7,000 sq. ft	6,749 <i>sq. ft.</i>	6,749 <i>sq. ft.</i>
Minimum lot area per unit	5,000 sq. ft.	1,838 <i>sq. ft.</i>	1,838 <i>sq. ft.</i>
Frontage	70 ft	45 <i>ft.</i>	45 <i>ft.</i>
Setbacks			
Front	25 ft.	19 <i>ft. (existing)</i>	19 <i>ft. (existing)</i>
Side (west)	7.5 ft.	2.5 <i>ft. (bldg.)</i> 9.2 <i>ft (deck)</i>	2.5 <i>ft (bldg.)</i> 4.2 <i>ft. (expanded deck)</i>
Side (east)	7.5 ft.	5.5 <i>ft (bldg.)</i> 12.3 <i>ft. (deck)</i>	5.5 <i>ft. (bldg.)</i> 7.3 <i>ft.; (expanded deck)</i>
Rear	15 ft.	49.4 <i>ft.</i>	49.4 <i>ft.</i>
Building height	30 ft.	Not provided	Not provided
Max. # of stories	2 1/2-stories	2 1/2-stories	2 1/2-stories
Max. Floor Area Ratio (FAR)	NA <sup>1</sup>	NA	NA
Max. lot coverage	30%	-32%	-35%
Min. open space	50%	-54%	-51%

As illustrated above, the existing site and structure do not meet many of the dimensional requirements, but are considered legal non-conforming as they predate current zoning requirements. Though the newly expanded decks are larger than the original decks the as-built decks are no more nonconforming than the existing residential structure because the decks are setback further, on each side, than the existing structure. The decks will, however, extend the existing nonconforming structure, related to building lot coverage. This necessitates approval from the Board of Aldermen for an extension of a nonconforming structure, and the enlargement of the decks, in general, require the approval from the Board for the extension (enlargement) of the non-conforming 4-family use.

<sup>1</sup> FAR does not apply in this case as Table 1, Footnote 7(4) as revised by Ordinance X-75 is not triggered.

B. Parking Requirements (Section 30-19)

The following chart illustrates how the existing site meets the current parking requirements for the 4-unit dwelling:

<b>36-38 Court Street Parking Analysis</b>	<b>Ordinance</b>	<b>"Proposed" (current conditions)</b>
Min. # of parking stalls	8	8
Setbacks MR1 Zone		
Front	25 ft.	—90 ft.
Side	25 ft.	—1 ft
Rear	25 ft.	—1 ft
Min. stall dimensions	9 ft. x 19 ft.	7.8 ft. x 18 ft.
Entrance/Exit Drives	12 ft. (min.)/20 ft.	—11 ft
Main driveway	(max) 14 ft.	

As shown in the table above, the existing parking area meets the minimum number of required parking spaces with access provided by a 10 ft. wide easement over the adjacent property at 42 Court Street. However, as the parking area provides off-street parking for more than 5 cars the applicant needs a number of waivers from the Board of Aldermen for the nonconforming parking area including:

- a waiver from the handicapped stall requirement;
- a waiver for the size of the parking stalls;
- a waiver for the width of the maneuvering aisle;
- a waiver for the width of the driveway;
- a waiver for no end-stall turnout for stalls #6 and #8;
- a waiver for stalls #1-5 and #7 to encroach within the required side setback;
- a waiver for perimeter screening requirements;
- a waiver from lighting requirements for outdoor parking facilities containing more than 5 stalls; and
- a waiver for curb stops.

***Prior to the Public Hearing, the petitioners should be expected to clam whether the current situation existed before the developer improved the building site If so, the petitioners may wish to consider documenting parking layout conditions pre-dating the current parking facility design requirements adopted in March 1977, and seek an extension of a nonconforming parking facility pursuant to Section 30-21(b).***

C. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements.

The petitioners are not proposing any changes to the parking or circulation pattern but are seeking a number of technical waivers to legalize the existing parking

configuration, based on the requirements for off-street parking lots containing more than 5 stalls. As the current parking layout appears to have existed in close to its present form for some time and, generally abuts the commercial side of the block, the Planning Department feels that the requested waivers appear to be acceptable as long as vehicular and pedestrian safety can be assured. Although substandard there is a benefit to having all of the required number of parking stalls provided on-site as there is limited street parking in the immediate area.

***Prior to the Working Session the petitioners should be expected to clarify how the current parking and driveways situation works and what measures the condo owners take to make sure it is safe for both pedestrians and vehicles. The Planning Department recommends that downward facing motion detector lighting be installed at the end of the driveway (if none currently exists) to ensure the safety of pedestrians and vehicles entering and exiting the site.***

**2. Adequacy of the methods for disposal of sewage, refuse and other wastes and the methods of regulating surface water drainage.**

It does not appear that there was an increase in impervious surface area when the developer improved the site and, therefore, the City Engineer did not require that plans be submitted for review.

**3. Screening of parking areas and structures on the site from adjoining premises or from the street.**

There is little formal landscaping on site though there is a small grass area in front of and at the rear of the structure. There is also no formal screening of the parking area from adjoining premises and the petitioners are not proposing any additional landscaping on-site. *However, the Planning Department notes that there appears to be room for some screening of the parking area and would recommend that the petitioners consult with abutters as to whether or not they would prefer additional screening of the parking area.*

**4. Consideration of site design including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines.**

The petitioners are seeking to legalize nonconforming decks and stairs, which were enlarged by the developer, without prior approval. The decks are located at the rear of the residential condominium structure, are roofed, and include a major stair structure providing the second means of egress for the four units. Though the decks are larger than the original nonconforming decks they do not appear to adversely impact the neighborhood, nor do they appear out of scale with the existing structure, as they do not project further into the side setbacks than the existing structure.

**5. Avoidance of the removal or disruption of historic resources on or off-site.**

The demolition of the existing decks should have been filed with the Newton Historical Commission for review, prior to their removal. The petitioners have since filed with the Commission and the Commission is in the process of reviewing their

application. It is not expected that the decks will be deemed "historically significant" however, *the Commission should complete their review prior to this petition being scheduled for a Working Session.*

**D. Relevant Special Permit Criteria**

**1. The site is an appropriate location for such use/structure**

The four-family residential use has existed on this site since at least 1929. Even though, in general, the City's Zoning Ordinance is set up to deter the expansions of non-conforming uses, this four-family use abuts commercial property and, as such, can be viewed as being in a transitional area abutting and adjacent to several commercial properties. Further, the Planning Department believes that the four-family use has existed without much incident, and that the expansion of the use, through the enlargement of the decks, should not be substantially more detrimental to the neighborhood than the existing (prior) four-family structure.

**2. The use as developed and operated will not adversely affect the neighborhood.**

Given that the nonconforming rear decks and, stairs do not project further into the side setbacks than the existing structure and offer an improved second means of egress the Planning Department believes that the expanded structure, and resulting expansion of the legal, non-conforming four-family residential use, should not adversely affect the neighborhood.

**3. There will be no nuisance or serious hazard to vehicles or pedestrians.**

The petitioners are not proposing any changes to the parking or circulation pattern but are seeking a number of technical waivers to legalize the existing parking configuration, based on the requirements for parking lots containing more than 5 stalls. As the current parking layout appears to have existed in close to its present form for some time and, generally abuts the commercial side of the block, the Planning Department feels that of the requested waivers appear to be acceptable as long as vehicular and pedestrian safety can be assured.

*As mentioned earlier, the Planning Department recommends that downward facing motion detector lighting be installed at the end of the driveway (if none currently exists) to ensure the safety of pedestrians and vehicles entering and exiting the site.*

**4. Access to the site over streets is appropriate for the types and number of vehicles involved.**

Although substandard, there is a benefit to having all of the required number of parking stalls provided on-site as there is limited on-street parking in the immediate area. Therefore, the Planning Department believes that if means can be taken to ensure the safety of vehicles and pedestrians access to the site is appropriate for the types and number of vehicles involved.



## VII. SUMMARY

The current four condominium owners seek to legalize the extension of the nonconforming use and structure that was made more nonconforming by the construction of larger rear decks and stairs. In addition, it appears that the parking facility does not meet multiple provisions of the applicable parking requirements and the petitioners are seeking approval of related waivers. As the as-built decks do not project further into the side setbacks than the existing structure, and the parking has existed in close to its present form for some time the Planning Department does not foresee any adverse impacts on the neighborhood. However the *Planning Department notes that prior the public hearing, the petitioners should:*

- *Demonstrate to the Law Department that they have legal access by means of an easement;*
- *Clarify whether the current parking situation existed this way before the developer improved the building site;*
- *Clarify how the current parking and driveways situation works and what measures the condo owners take to make sure it is safe for both pedestrians and vehicles;*
- *Consider the installation of downward facing motion detector lighting at the end of the driveway (if none currently exists) to ensure the safety of pedestrians and vehicles entering and exiting the site; and*
- *Consult with abutters as to whether or not they would prefer additional screening of the parking area.*

*Finally, the Newton Historical Commission should complete their demolition review prior to this petition being scheduled for a Working Session.*

## ***Zoning Review Memoranda***

Dt: May 4, 2007

To: Mark Salvati, Esq., representing 36-8 Court St. Condominium Trust

Fr: Juris Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director, Department of Planning and Development  
John Lojek, Commissioner of Inspectional Services

RE: **Extension of non-conforming use and structure; parking waivers.**

**Applicant: 36-8 Court St. Condominium Trust**

**Site:** 36-8 Court St., Newton

**SBL:** Section 32, Block 192, Lot 168

**Zoning:** Multi Residence 1

**Lot Area:** 6,749.3 sq. ft. [per plan]

**Current use:** 4 DU Condominium

**Prop. use:** 4 DU Condominium

### Background:

The subject property was renovated by developer Mohammed R. Farooqui and subsequently marketed as four condominiums. As a 4 DU use and building pre-existing zoning, both use and structure were nonconforming prior to alterations. With the alterations, the structure was made more nonconforming by the construction of certain larger rear decks. This concern was identified by the Inspectional Services Department (ISD) when the owner requested certificates of occupancy. On August 2, 2005, ISD issued temporary certificates of occupancy for three units and a standard Certificate for one unit, conditioned on the requirement that the owner obtain zoning relief or rebuild the rear decks to the smaller prior size. Subsequently Mr. Farooqui sought to file a petition for a variance, which was not accepted due to insufficient and/or conflicting information in the filing documents and a question as to the appropriate forum for the relief requested. In addition, it appears that the parking facility does not meet multiple provisions of the applicable parking requirements. The current four condominium owners seek to legalize the extension of non-conforming use and structure along with approval of related parking waivers. This necessitates Board of Aldermen approval pursuant to Sections 30-21(a)(2)b), 30-21(b) and 30-19(m).

### Administrative determinations

1. The subject dwelling is located on property shown on the Barnes & Beal Atlas of City of Newton, 1929 as consisting of two lots: Lot 6 — 4,923 sq. ft. and Lot 6X — 2117 sq. ft., totaling 7,040 sq. ft. However, the submitted "Site Plan", dated Aug., 30, 2004, revised 8/18/06 prepared by Azimuth Survey Service shows a lot with 6,749.3 sq. ft., which also references a plan dated March 5, 1955, by William J. Ford. The City's GIS system indicates a lot size of 6,743 sq. ft. The applicant is responsible for resolving the differences noted above. While it is not possible to determine whether the subject lot qualifies as a lot existing prior to December 7, 1953 based on information received to date, it is noted that multi-family use is not subject to lot status regarding the legal date such lot is created. However, to the extent dimensional standards associated with underlying zoning may be applicable, the following discussion assumes pre-53 status for purposes of comparative analysis.

2. The subject locus is currently within an MR-1 zone, renamed effective August 27, 1987 as successor designation for the Private Residence zone due to a major Zoning Ordinance update. The Zoning Atlas maintained by the Engineering Division indicates that at the time of adoption of the original Zoning Ordinance Dec. 27, 1922, the subject property was initially zoned General Residence, a zone which allowed multi-family dwellings (more than 2 fam.). Subsequently, the Zoning Atlas indicates the area containing the subject lot as being in the Private Residence zone from Dec. 15, 1930 until renamed MR-1 in 1987. The Private Residence zone and its successor, the MR-1 zone allow residential dwellings with maximum 2 families, but not multi-family dwellings.
3. While ISD files do not contain a copy of the original building permit for this dwelling, Alteration Permit 1277-1919 issued October 31, 1924 indicates that the dwelling was occupied by two families, a by-right use in the General Residence zone. Subsequently, Plumbing Permit 556-1002 issued June 4, 1929 indicates 4 families on the premises, also allowed by right in the General Residence zone. Upon rezoning to Private Residence, the 4 family use became a legal non-conforming use.

Zoning history of lot per Eng. Zoning Atlas:

• Dec. 27, 1922 – General Res.	<u>By-right res. for more than 2F, incl. apt. house, etc.</u>
• Dec. 15, 1930 – Priv. Res.	By-right 2F max
• Nov. 25, 1940 – Priv. Res.	By-right 2F max
• July 21, 1951 – Priv. Res.	By-right 2F max
• Aug. 27, 1987 – MR-1	By-right 2F max

As the subject, now enlarged decks, indicate an extension of the non-conforming use, this necessitates approval by the Board of Aldermen per Sections 30-21(a)(2)b), and 30-21(b).

4. While it is unclear when the original structure was built, it is known that during the 1920's it was located in the General Residence zone, which had a 15 ft. front setback, but no side setback requirement. As a result, the original structure conformed to then applicable dimensional controls. Upon rezoning to Private Residence (now MR-1), a multi-family use was no longer allowed in this zone, and no standards were provided for such uses in this zone. Multi-family uses are allowed only by special permit in the MR-2, MR-3 and MR-4 zones, where standards are provided, which vary depending on the zone. In the MR-2 zone, the next MR zoning category, setbacks applicable to multi-family dwellings are: front: 25 ft.; side: 7.5 ft.; and rear: 15 ft. These requirements are identical to setbacks required for 1F and 2F dwellings in the MR-1 zone located on pre-53 lots. When compared to these requirements, the subject dwelling falls short as follows: front setback: 19 ft. to front porch vs. 25 ft.; west side setback of 2.5 ft. and east side setback of 5.5 ft., respectively, vs. 7.5 ft. In addition, the now expanded rear decks encroach into the 7.5 ft. side setbacks as follows: 4.2 ft. on the west side, and 7.3 ft. on the east side, whereas the previous deck appears not encroach within such side yards. This necessitates approval of the Board of Aldermen for extension of a nonconforming structure per Sections 30-21(a)(2)b), and 30-21(b).
5. Lot coverage of 30% has been in effect since 1953 for Priv. Res. (now MR-1). In MR-2, this same limit applies specifically to multi-family dwellings. While the subject dwelling pre-exists these requirements, submitted information does not include pre-existing lot coverage data. However, as the now rebuilt subject rear decks are larger than the prior decks as shown on photographs, and larger than the rear piazza authorized by Building Permit 461-1519 issued June 4, 1952, the current deck reconstruction exceeds, and in effect extends previously existing non-conforming

conditions. Based on submitted plans, including scaling of various dimensions, lot coverage (including roofed rear decks and major stair structure.) is now approximately 35.6% following the alterations which exceeds the 30% limit. With the preceding smaller roofed decks or previously authorized piazza, lot coverage is estimated in the 31%-32% range, approximating the pre-existing non-conforming conditions. As a result, the further extension of non-conforming lot coverage to approximately 35.6% necessitates approval of the Board of Aldermen per Sections 30-21(a)(2)b) and 30-21(b). FAR does not apply in this case as Table 1, Footnote 7(4) as revised by Ordinance X-75 is not triggered.

6. Minimum open space of 50% has been in effect since 1987 for all uses in MR-1 while in MR-2, this requirement applies specifically to multi-family dwellings. It is noted that the subject dwelling pre-exists this requirement, yet submitted information does not include pre-existing open space data. However, with the reconstructed larger roofed rear decks and major stair structure, utilizing plan data and scaling, open space is calculated at approximately 51.4%, which does not fall below the minimum open space requirement of 50%. As a result, no relief is needed for this parameter.
7. Section 30-19(d), *Number of Stalls*, subsection (2) requires 8 parking spaces for a 4-unit multi-family dwelling. Eight spaces are provided on site, with access by means of a 10ft. wide easement over adjacent property at 42 Court St., meeting the above requirement as to number of spaces. However, while Section 30-19(h)(2)c) requires one handicapped stall, no HP space is provided, necessitating a waiver from the Board of Aldermen per Section 30-19(m). Alternatively, the applicant may wish to consider providing a HP stall.
8. Section 30-19(h), *Design of Parking Facilities* establishes the respective parking layout and design requirements applicable to parking facilities containing more than five stalls. The proposed parking facility contains undersize parking spaces throughout. In addition, the maneuvering aisle is approximately 12 – 13 ft. wide, which does not meet the minimum 24 ft. aisle width requirement pertaining to 90 degree parking established in 30-19(h)(3). Also, the driveway, which is largely located within an easement over the adjacent 42 Court St. property, and occupies a small portion of the subject lot, appears to be approximately 11 ft. wide, and does not meet the minimum entry/exit driveway width requirement of 12 ft. established in 30-19(d)(4)a) for one-way use or 20 ft. established in (4)b) for two-way use. No end-stall turnout is provided for stalls #6 and #8 as required by Section 30-19(h)(2)e). Although prohibited by Section 30-19(h)(1), Stalls #1-5 and #7 encroach within the required side setback distance of 7.5 ft. for pre-53 lots in the underlying MR-1 zone, which is also identical to the side setback requirement for multifamily dwellings in the MR-2 zone. All of the preceding necessitates respective waivers from the Board of Aldermen per Section 30-19(m). Alternatively, the applicant may wish to consider documenting parking layout conditions pre-dating the current parking facility design requirements adopted in March 21, 1977 and seek extension of a non-conforming parking facility pursuant to Section 30-21(b).
9. Section 30-19(i) *Landscaping*, subsection (1) establishes the perimeter screening requirements applicable to parking facilities containing more than five stalls. No perimeter screening is provided, necessitating a waiver from the Board of Aldermen per Section 30-19(m). Alternatively, the applicant may wish to consider documenting parking landscaping conditions pre-dating the current parking facility design requirements adopted in March 21, 1977 and seek extension of a non-conforming parking facility pursuant to Section 30-21(b).
10. Section 30-19(j), *Lighting, Surfacing, and Maintenance of Parking Facilities*, subsection (1) establishes the lighting requirements for outdoor parking facilities containing more than 5 stalls.

No lighting information has been provided on submitted plans. Any lighting must meet minimum intensity of 1 ft.-candle over the entire surface of the parking facility, unless waived by the Board of Aldermen per Section 30-19(m). In addition such lighting may not cause lighting glare onto adjacent streets and properties, and must meet the requirements of Ordinance X-142, *Light Ordinance*, as set out in sections 20-23 through 20-28 pertaining to light pollution and light trespass. The applicant may wish to consider documenting parking lighting conditions pre-dating the current parking facility design requirements adopted in March 21, 1977 and seek extension of a non-conforming parking facility pursuant to Section 30-21(b).

11. Section 30-19(j), *Lighting, Surfacing, and Maintenance of Parking Facilities*, subsection (2) establishes the applicable surfacing, and curbing requirements. It is noted that no curb stops have been provided at stalls #7 and #8 as required in Section 30-19(j)(2)e), necessitating a waiver from the Board of Aldermen per Section 30-19(m), unless the applicant provides appropriate wheel or curb stops. Moreover, the applicant needs to obtain approval of the City Engineer as to surfacing, grading and drainage.
12. Although the subject building is considerably more than 50 years old, there are no records, which indicate that the developer obtained a review by the Newton Historical Commission. It is suggested the applicant contact the Commission to obtain such review as applicable pursuant to historic preservation regulations.
13. It is noted that the submitted partial architectural plans lack the stamps and signatures of applicable registered professionals preparing the plans and certifying required calculations. The applicant is responsible for providing stamped and signed plans not later than filing of the petition with the Clerk of the Board of Aldermen.
14. See "Zoning Relief Summary" below.

<i>Ordinance</i>	<i>Zoning Relief Summary</i>	
	<i>on</i>	<i>ng use</i>
30-21(a)(2)(b) 30-21(b)	Approval of extension of nonconforming structure, i.e. rear decks, to provide for an increase of the non-conforming 4-DU use in the MR-1 zone to a greater extent than the previously existing non-conforming 4-DU use.	X
	Non conforming budding(diiyelling)	
30-21(a)(2)(b) 30-21(b)	Approval of extension of nonconforming structure.	X
30-15, Table 1 30-21(b)	Approval to reduce east side yard setback to allow deck within 7.3 ft. of side lot line.	X
30-15, Table 1 30-21(b)	Approval to reduce west side yard setback to allow deck within 4.2 ft. of side lot line.	X
30-15, Table 1 30-21(b)	Approval to increase non-conforming lot coverage to 35.6%.	X
	Site	
30-23	Approval of site plan	X

*\*02*

<b>Zoning Relief Summary (cont.)</b>		<b>Action Required</b>
<b>Ordinance</b>		
	<b>Parking</b>	
30-9(h)(1) 30-19(m)	Approval to waive parking side setback to allow stalls #1-5, and #7 to be located within approximately 0 ft. to 1 ft. of the side lot line.	X
30-19(h)(2)a)&b) 30-19(m)	Approval to waive 9ft. x 19ft. stall size reducing stalls #1-6 to 7.8ft x 18 ft. and reducing stalls #7 & 8 to 9 ft. x 19ft.	X
30-19(h)(2)c) 30-19(m)	Approval to waive requirement for one HP stall.	X
30-19(h)(2)e) 30-19(m)	Approval to waive requirement for end-stall turnout at stalls #6 and 8.	X
30-19(h)(3)a)&b) 30-19(m)	Approval to waive maneuvering aisle width from 24 ft. to approximately 12 –13 ft.	X
30-19(h)(4)b) 30-19(m)	Approval to waive driveway entry/exit width from 12 ft. (one-way use) and from 20 ft. (two-way use) to approx. 11 ft.	X
30-19(i)(1)a) 30-19(m)	Approval to waive requirement for perimeter screening.	X
30-19(j)(1)a)&b) 30-19(m)	Approval to waive requirement for parking facility lighting.	X
30-19(j)(1)a) 30-19(m)	Approval to waive and reduce requirement for parking facility lighting intensity from 1 ft.-candle to the extent necessary.	TBD*
30-19(j)(2)e) 30-19(m)	Approval to waive requirement for curb stops at stalls #7 and #8.	X
	<b>Sign</b>	N/A
	N/A	
	<b>Special Permit</b>	
30-24(d)	Approval of special permit	X

TBD\* = To be determined

Plans reviewed:

- Plan titled "Site Plan Prepared for 36-38 Court Street Condominium, 36-38 Court St., Newton, MA", dated August 30, 2004, revised 8/18/06 prepared by Azimuth Survey Service, 136 Careswell St., Marshfield, Mass., stamped and signed by Paul J. Zemanek, Professional Land Surveyor.
- Excerpt of Plan titled "Upper Level Deck", undated, prepared for Mohammed Farooqui, 36-38 Court St., by Red Hills Consulting Engineers, 14 Overlook Rd., Wayland, MA 017783, bearing no stamp or signature of a registered professional.
- Excerpt of Plan titled "Upper Level Deck", undated, prepared for Mohammed Farooqui, 36-38 Court St., by Red Hills Consulting Engineers, 14 Overlook Rd., Wayland, MA 017783, bearing no stamp or signature of a registered professional.
- Photocopy of "Appraisal of Real Property", dated 4/26/2004, with photos showing front and rear elevations (prior to alterations)
- Color photos #1 — 5 showing rear elevations with back deck alterations.